

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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BRIEF FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,730

361

SAM E. GOODEN, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

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QUESTIONS PRESENTED

1. Did the Court below err in denying the motion to suppress and finding that there was probable cause for the stopping of appellant's automobile and the search thereof and of the person of the appellant, which produced the essential physical evidence the Government offered at the trial resulting in appellant's conviction?

2. Did the Court below err in denying the motion for a judgment of acquittal on the basis that the many discrepancies in the complaining witnesses' stories prevented the government from establishing a prima facie case?

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BRIEF FOR APPELLANT

Jurisdictional Statement

This appeal is from a judgment of conviction by the United States District Court for the District of Columbia (Robinson, J.) filed February 26, 1968, following trial on an indictment alleging robbery and assault with a dangerous weapon. 22 D.C. Code §§ 2901, 502 (1967). A timely petition for leave to appeal in forma pauperis was filed, and the Court below authorized appellant to so proceed.

The District Court had jurisdiction pursuant to 11 D.C. Code §521(a)(2) (1967). This Court has jurisdiction pursuant to 28 U.S.C. §1291.

Statement of the Case

On December 11, 1967, the matter came on for trial before the United States District Court. Prior to impaneling the jury, the Court below held a hearing on appellant's motion to suppress certain physical evidence taken from appellant incident to his arrest. In support of his motion, appellant's attorney below called as a witness the arresting officer, Thomas Franklin Way, a member of the District of Columbia Metropolitan Police (hereinafter "Way"). (Tr. 8-32.)

Way testified that he was riding alone in a patrol scout car at approximately 3:00 AM, March 18, 1967, proceeding toward Kenilworth Avenue and Eastern Avenue, and that he first saw the defendant at Eastern Avenue and Quarles Street, N.E. Way, at the time of sighting appellant, was responding to a reported robbery at a gasoline station located at 1301 Kenilworth Avenue, N.E. Prior to said report, Way received, at approximately 2:45 AM, another "lookout for a robbery of a gas station on Bladensburg Road in which a 1960 Chevrolet convertible, white over blue in color, bearing District tags 164-465, operated by a Negro male, was involved". (Tr. 12.) Way said that defendant was driving a 1960 Chevrolet with no rear lights, which "matched the description that [he] was given for an earlier robbery hold-up" (Tr. 10), that Way made a U-turn in order to follow the appellant, and that at Sheriff Road the appellant made a left turn into the state of Maryland.

(Tr. 10-13.) Way further stated that after crossing into Maryland in pursuit of the appellant he turned on his red light to try to stop him, but, in the absence of any response thereto, the light was doused. Way testified that in his pursuit of appellant he was not traveling at extreme speeds, that appellant took no evasive tactics indicating that he was aware he was being pursued, and that he later said he thought the car behind was a taxicab. (Tr. 22-23.) According to Way, the appellant soon thereafter pulled off the road and stopped his car, but apparently not in response to the officer's conduct, and without an apparent awareness that a police car was in pursuit. Appellant later told the arresting officer that he had pulled off the road for personal reasons.

Way further testified that when he saw the automobile he could not see the license number because the car had no rear lights. Way said that he did not see the appellant's license number until both cars were coming to a stop off the road. (Tr. 24.) Appellant was ordered out of the car by Way, his person and his car searched, and physical evidence consisting of a gun and a wallet were seized and used against appellant at the trial resulting in his conviction.

At the hearing, Way testified that appellant was not known to him prior to the arrest, that when he saw appellant's car it was for the first time, that he did not have any personal knowledge of either one of the robberies described in the two lookouts he received just before the arrest, and that he had

no other information or knowledge except what he received over the police radio.

At the conclusion of Way's testimony appellant's attorney moved to suppress the evidence obtained during the search of appellant and his automobile, arguing that Way did not have probable cause to stop appellant's car and search him at that time. The Court below found probable cause and denied the motion to suppress. (Tr. 34-35.) Thereafter a trial was held before a jury, and the jury found appellant guilty on four counts, charging robbery and assault with a dangerous weapon against two separate persons. During the course of the trial, the Government's critical evidence was the wallet and gun seized from appellant. One of the prosecuting witnesses identified the wallet as allegedly having been taken from him by the appellant incident to the robbery (Tr. 110-112), and the gun was also identified by a prosecuting witness as allegedly being the one appellant used during the course of the alleged crimes. (Tr. 56-57.) Appellant was sentenced to serve in a penitentiary for two to six years concurrently and one to three years concurrently. This appeal followed.

Statutes involved

The statutes involved are 22 D.C. Code §§2901, 502 (1967), which provide:

§22-2901. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or

snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years."

22-502. Assault with intent to commit mayhem or with dangerous weapon.

"Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon shall be sentenced to imprisonment for not more than ten years."

Statement of Points

1. The District Court erred in ruling that the Government could produce evidence which was the product of a search and seizure incident to an arrest for which there was no probable cause.

2. The District Court erred in denying the motion for judgment of acquittal where, as here, the discrepancies in the complaining witnesses' statements prevented the prosecution from establishing a prima facie case.

Summary of Argument

I

Where the evidence adduced demonstrates that the arresting officer had never seen the appellant's car or the appellant and had no personal knowledge of the offenses allegedly committed in the geographical area in which appellant was arrested, the stopping and searching of appellant on the public highways was the result of the police officer's caprice or mere suspicion, rather than the product of an

apprehension of a suspect where the arresting officer had probable cause to believe that the suspect had committed a crime.

II

Where, as here, the complaining witnesses' versions of the alleged offenses contain substantial material discrepancies, the prosecution has failed to make a prima facie case, and the appellant's motion for judgment of acquittal should be granted by the Court below.

Statement in Compliance with Rule 33(d)

Appellant desires the Court to read the following pages of the reporter's transcript:

1. With respect to Point I: Tr. 8-32, 34-35, 56-57, 110-112.
2. With respect to Point II: Tr. 71, 75-76, 85-88, 93, 101, 103, 105, 110, 121, 131, 132, 162-169.

Argument

I

The Court should have granted a motion to suppress evidence.

The Supreme Court of the United States has spelled out the requirements for finding of probable cause in coorection

with search of vehicles moving on a public highway. Brinegar v. U.S., 333 U.S. 160, 69 S. Ct. 1302 (1949). In this case the Court discussed again and reaffirmed the standards announced in Carroll v. U.S., 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925), for judging whether police officers have probable cause to stop a motor vehicle on a public road and search the automobile and its occupants. The facts in Brinegar and Carroll, supra, with contrast to those here, will demonstrate that there was error in denying the motion to suppress the evidence adduced in this case.

In Carroll, supra, federal prohibition agents and a state police officer stopped and searched a car on a highway leading from Detroit to Grand Rapids, Michigan, and seized a quantity of liquor. Several months before the search, the defendants and the arresting agents had met on the occasion of the agents making a sham arrangement to purchase illegal liquor from the defendants. At the time the agents not only became familiar with the physical identity of the defendants but also noticed the defendants' automobile and its license number. At the time of the arrest the defendants were operating on a well-known route for the transportation of illegal liquor from Canada to Detroit. The arresting officers actually recognized the defendants and their same automobile and, following a pursuit, stopped the car, searched it, and seized the illegal contraband.

In Brinegar, supra, the defendant was convicted of importing illegal liquor into Oklahoma from Joplin, Missouri. In this case, the arresting officer was well acquainted with the defendant and his "occupation", having arrested him about five months earlier for illegally transporting liquor and having seen him loading liquor into a car or truck in Joplin, Missouri, on at least two occasions during the preceding six months. The arresting officer was parked in northeastern Oklahoma at a point about five miles west of the Missouri-Oklahoma line on a road between Joplin and Tulsa. As the defendant passed the officer's car, the defendant was recognized as driving the passing car, and the agents noted that the car appeared to be heavily loaded and weighted down with something. As the defendant passed the officers, he increased his speed, and after being pursued for about a mile at top speed, they gained on him, sounded their siren, overtook him and crowded his car to the side. As the agents got out of the car and approached the defendant, they asked, "How much liquor have you got in the car?" and the defendant replied, "Not too much." It developed that he had twelve cases in the car.

Under the circumstances of the Carroll and Brinegar cases, supra, the Supreme Court, without much difficulty, found that there was probable cause for stopping the vehicles involved on public roads and searching the persons and automobiles incident to these arrests.

Contrast the facts herein with these cases. The arresting officer had never seen Defendant Gooden nor his car and had no personal knowledge of the persons allegedly involved in the robberies which were the subjects of the lookouts he received. All that the arresting officer knew was that a Negro male driving a Chevrolet convertible with a certain tag number was possibly involved in reported crimes in the general area of his patrol. Washington, D. C., has a population of over 60 percent Negro and also is the home of several of the most successful Chevrolet dealers in the United States. The arresting officer has stated that he was driving in the general, rather than the immediate, vicinity of the reported crimes, on highly traveled arteries, i.e., Eastern Avenue, Kenilworth Avenue, and Bladensburg Road. Under the circumstances, as we know them in the District of Columbia, this officer might have seen, in the course of a few blocks, as many as half a dozen Chevrolet convertibles being driven by Negro males. It is important to remember that the arresting officer testified that at the time of allegedly sighting and pursuing appellant's car he was unable to see the license tag, which, in the circumstances of this arrest, would be the basic reason for the officer to pursue a particular Chevrolet convertible. Appellant's car gave the officer, according to his own testimony, no reason to believe by its speed or conduct that a crime had been committed, and, in fact, appellant pulled off the road for his own reasons and without awareness

of being pursued. It is very significant that the arresting officer says that he was not aware of appellant's license number until they were off the road. He says that he saw the license number before he got out of the car. Earlier, however, in his testimony, Officer Way said that the appellant had no rear lights and that the license number was thus not ascertainable. There is no testimony in this record that the officer had pulled up close enough behind appellant with his head car lights on and because of such head car lights was able to read the license number from his own vehicle. Absent this testimony, it is entirely likely that the arresting officer had, after turning off his warning light, come stealthily upon appellant's car and surprised him at the moment of arrest. There is nothing to indicate that this is not the case and that following the arrest, searching of the appellant and his car, handcuffing of appellant and placing him in the squad car, the officer then ascertained the identity of the license tag. Also, Way never said appellant's clothes fit the lookout.

It is obvious that the facts in this case are totally distinguishable from those in Carroll and Brinegar, supra, wherein the courts, for obvious reasons, found that officers had probable cause for stopping and searching moving vehicles. Contrasting the facts therein and those present here, it is obvious that the standards set forth in those cases have not been met and that the District Court below erred in denying the motion to suppress the essential physical evidence. The

essentiality of the evidence which the Court refused to suppress is evident from the words of the District Court Judge: "If I am wrong on the motion to suppress, the government has no case here." (Tr. 140.) It is appellant's strongest contention that the court was wrong and it thus follows that the motion should have been granted.

II

Discrepancies in the prosecution's case warranted a judgment of acquittal.

The government's two complaining witnesses, Frank Phinous and George Norris Sims, stories were so conflicting in significant detail as to preclude the government from establishing a prima facie case against appellant. The court's attention is directed to the following substantial discrepancies:

The alleged crimes are supposed to have been committed by the appellant in Mr. Phinous's place of business following a furniture moving job in which the complaining witnesses, appellant, and one other person had collaborated. According to Phinous, the moving job was completed and the four movers had returned to the store around 2:00 or a little after. (Tr. 75-76.) Sims, on the other hand, testified that the four men returned to the store around 3:00 o'clock (Tr. 105).

Mr. Phinous states that the alleged robbery occurred between 5:00 o'clock and 6:00 o'clock AM, and that the men had

been in the store since 2:00 o'clock. (Tr. 93.) On the other hand, Sims tells a widely conflicting story, to the effect that the alleged crime occurred around 4:30 AM, or approximately an hour and a half after he states they returned to the store. This is a vital discrepancy; one witness maintained that the crimes occurred an hour and a half after an easily recallable event, and the other complaining witness says that the crimes occurred from three to four hours after that event.

The unreliability of the complaining witnesses is no more evident than in the completely conflicting statements as to the job performed during the evening in question. Certainly if they are to be believed, we should expect the complaining witnesses to corroborate each other on who did the vital tasks of driving the truck and the car used in the moving job. Mr. Phinous says that Mr. Sims was driving the truck (Tr. 71). Mr. Sims says flatly that he wasn't the driver (Tr. 103, 132) and also states explicitly that Mr. Phinous was driving the truck (Tr. 131).

Also of crucial import is the fact that there apparently was considerable drinking among the men, throwing substantial doubt on the accuracy of the complaining witnesses' recollection. While Mr. Phinous says that he did not drink (Tr. 85), the record of the grand jury indicates that he was in the store drinking at the time of the alleged crime. (Tr. 87-88, 101.)

The foregoing demonstrates that the complaining witnesses told substantially conflicting stories, thereby

precluding the government from establishing a prima facie case. The only believable story is thus the one given by appellant, namely, that Mr. Sims had dropped his pocketbook in the truck and that he, the appellant, had picked it up, that the parties had been drinking and gambling, and that, following an altercation, appellant left the premises and that no crimes had been committed. (Tr. 162-169.) The Court should have granted the motion for a judgment of acquittal.

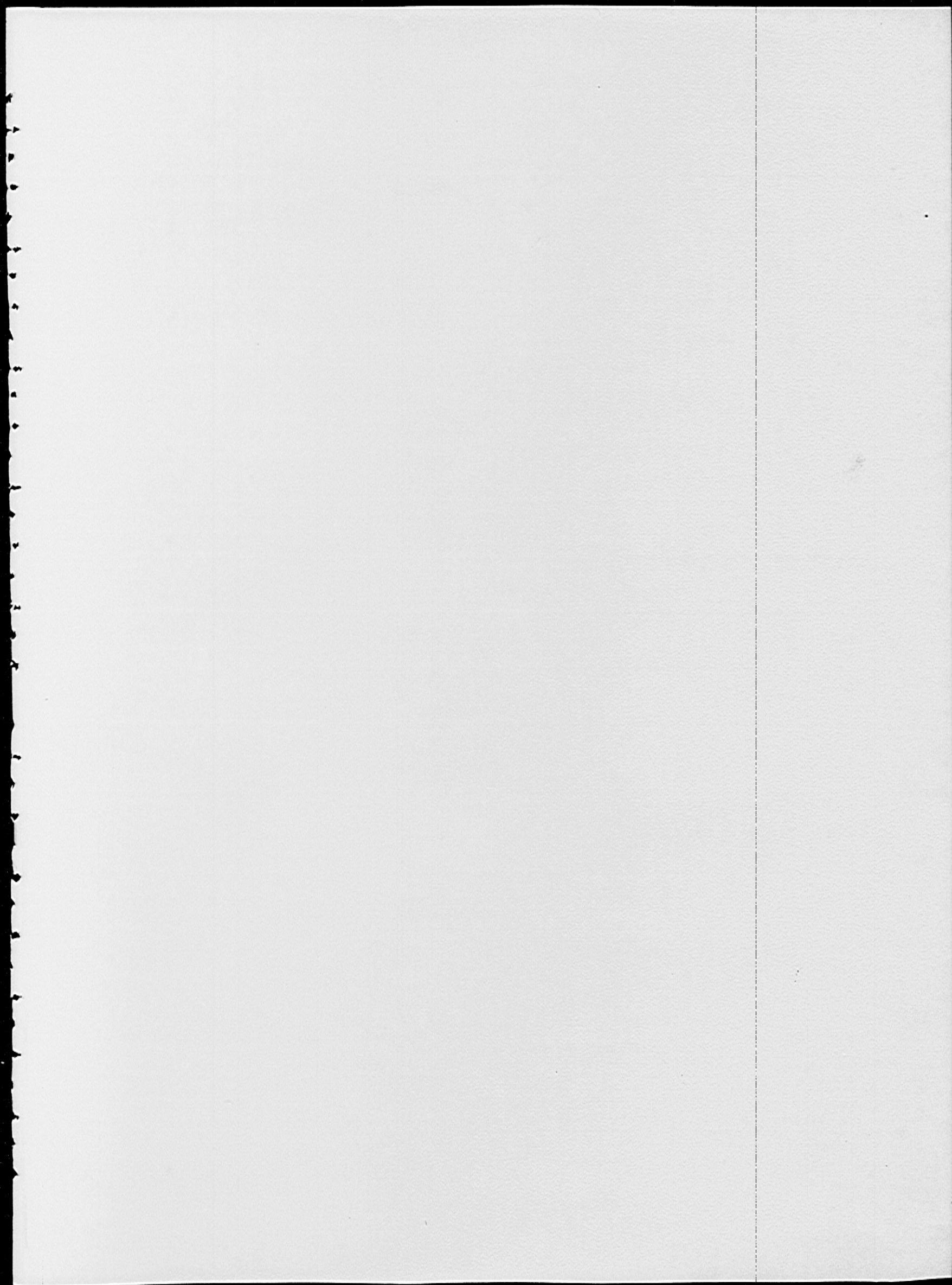
Conclusion

For all the foregoing reasons, the judgment of the District Court should be reversed.

Respectfully submitted,

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BRIEF FOR APPELLEE

United States Court of Appeals
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No. 21,730

SAM E. GOODEN, APPELLANT

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UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

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United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 8 1968

Nathan J. Paulson
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ISSUE PRESENTED*

In the opinion of appellee, the following issue is presented:

Was there probable cause for appellant's arrest?

* This case has not previously been before this Court under the same or similar title.

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* Cases chiefly relied upon are marked by asterisks.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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SAM E. GOODEN, APPELLANT

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UNITED STATES OF AMERICA, APPELLEE

**Appeal from the United States District Court
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By a six-count indictment filed May 29, 1967, appellant was charged with three counts each of robbery and assault with a dangerous weapon. His motion to sever the first two counts from the others was granted on July 21, 1967. Beginning on December 11, 1967, appellant was tried before Judge Robinson on counts three through six, which charged the robbery and assault of Frank Phinous and the robbery and assault of George N. Sims in that order. On December 13, 1967 the jury returned guilty verdicts on all four counts. Appellant was sentenced on February 16, 1968 to two consecutive two to

six year terms of imprisonment on the robbery counts. A one to three year term for each assault was ordered to run concurrent with the robbery sentence to which it corresponded by victim.

The Motion to Suppress Hearing

Private Thomas F. Way, Fourteenth Precinct, testified at the motion to suppress hearing. At approximately 3:05 or 3:10 a.m., March 18, 1967, while riding alone in Scout Car 146, he observed appellant in a 1960 Chevrolet convertible, white over blue or turquoise in color, driving on Eastern Avenue at Quarles Street, Northeast, "at a higher than normal rate of speed." This car was without rear lights, and Way was unable to read the license number. (Tr. 9-10, 17-18.) At 3:05 a.m., approximately two to three minutes before, the officer had received a radio run for a robbery holdup at Myers Gulf Station, 1301 Kenilworth Avenue, Northeast, lookout for a Negro male armed driving a 1960 Chevrolet convertible bearing D. C. tags 164-445. Having jotted down the tag number, Way was responding to this run at the time he observed appellant's automobile. (Tr. 10-11.) Eastern Avenue and Quarles Street is some six or eight blocks from 1301 Kenilworth Avenue (Tr. 21-22, 30).

However, this was not the only information which Way had. At approximately 2:45 a.m. he had received a radio report for the robbery of a gas station at 1201 Bladensburg Road, Northeast,¹ lookout for a Negro male, 25 to 30 years old, dark skin, heavy build, thick mustache, wearing a brown jacket and brown Army-type fuzzy cap, last seen operating a 1960 Chevrolet convertible light bluish-green in color with D.C. tags 164-465, south on 17th Street, Northeast, and east on M Street, Northeast, from 17th Street² (Tr. 12, 20-21).

¹ This robbery as well as that at 1301 Kenilworth Avenue, Northeast, are charged in another indictment. See Cr. Case No. 687-67.

² Officer Way first testified that the 2:45 a.m. lookout he received was for a Negro male operating a 1960 Chevrolet convertible white over blue bearing D.C. tags 164-465 (Tr. 12). Later he was asked

Recognizing that the car he saw at Eastern and Quarles answered to these radio descriptions, Officer Way made a U-turn and followed in an effort to catch up as the auto continued on Eastern Avenue and then took a left turn on Sheriff Road into Maryland (Tr. 10, 13). When on Sheriff Road he turned on his flashing red signal light, but not his siren, to try to stop the Chevrolet. When it did not pull over in response, Way decided to turn off the light and bide his time until more police units could converge. While Scout Car 146 was following, the Chevrolet did not travel at extreme speeds or take evasive action. (Tr. 13-14, 23.) At length, some three to five minutes after Way turned off his flasher, for no apparent reason the Chevrolet pulled off the road. The officer pulled off behind it.

As both cars were pulling off the road to stop, Way was able to read the Chevrolet tag number; it was D.C. 164-465. He read this number before he got out of Scout Car 146. (Tr. 13-14, 22-24.) Way then ordered appellant out of his car, placed him under arrest and searched him (Tr. 13-15, 24). Recovered from his right coat pocket was a .22 caliber revolver, Government's Exhibit No. 1 for identification (Tr. 16, 142). A search next of appellant's car yielded additional items, including another pistol,³ none of which were mentioned or introduced at trial (Tr. 16). In a later search of appellant at the Seat Pleasant, Maryland police station, a Sergeant Fury of the Robbery Squad recovered Government's Exhibit No. 2 for identification, what appeared to be two portions of a black wallet containing various papers and documents in the names of both appellant and George N. Sims (Tr. 27-28, 110-12).

After argument the motion to suppress was denied (Tr. 33-35).

by the prosecutor whether this more complete report contained in the P.D. 163 prepared at his direction refreshed his recollection as to the actual radio report heard. He indicated that the more complete report was what he had received. (Tr. 18-21.)

³ This second pistol was later identified by one Carpenter as having been stolen from him (Tr. 26-27).

The Trial

Frank Phinous, the owner of Frankie and Johnnie's Furniture Store, 1400 9th Street, Northwest, testified that he, appellant, George Sims and one Willie Lundy moved a lady's furniture on Friday evening, February 10, 1967. Phinous had first met appellant the preceding Monday at a service station at 9th and N Streets, Northwest, where appellant had repaired the witness' car. The furniture store truck as well as Phinous' own car, he thought, had been used in the moving. Phinous recalled that he drove the car and Sims the truck except that appellant drove the truck "some" on the return trip from the moving. (Tr. 40-46, 69-71.) After the job was finished at around 2:00 or 2:30 a.m., all four men returned to the store. Phinous paid the three for the job and they remained together in the rear of the store eating sandwiches and "messaging around." (Tr. 44, 47-48.) Eventually, approximately between 5:00 and 6:00 a.m., Phinous, who was with Lundy in the store office, called to Sims that he was preparing to lock up the store (Tr. 49, 79, 93). At first Sims did not answer but soon he appeared in the company of appellant. After Phinous has put out all but a single light, appellant produced what appeared to be a .22 caliber black pearl-handled pistol,⁴ pointed it at all three of the others and announced his intention as robbery. Putting out the remaining light, appellant ordered the three to lay on the floor. Phinous squatted down and appellant removed his watch from his arm and \$160 and a check from his shirt pocket. As soon as appellant made his exit Phinous phoned the police.⁵ (Tr. 49-52, 78-81.)

⁴ Phinous said that Government's Exhibit No. 1 looked like the pistol then held by appellant (Tr. 56-57).

⁵ On cross-examination Phinous testified that if any drinking had occurred that night amongst the men he did not see it (Tr. 78). The witness could not remember telling the person with whom he spoke in the Grand Jury section of the United States Attorney's Office that the robbery had occurred 'while he and two friends were in his store drinking' (Tr. 85, 87-88). It was later stipulated that if called to the stand the Grand Jury secretary would testify that Phinous did make that statement to her (Tr. 101).

George N. Sims, next to testify, did moving for Phinous along with appellant and Lundy on February 10, 1967. The work took from around 7:00 p.m. until around 3:00 the next morning. All the men then returned to Phinous' store and Sims went alone to Lil's Grill at 9th and O Streets and purchased sandwiches and coffee for all. That evening just before the moving job appellant had borrowed \$3.00 from Sims. (Tr. 103, 109, 118-20.)

At around 4:30 a.m. after the coffee and sandwiches had been consumed and appellant had been paid, appellant called him aside and paid the \$3.00 owed (Tr. 106, 110, 125-26). However, appellant's next move was to go into Sims' pocket and remove \$4.00. Sims thought he was joking until appellant drew a gun and put it into his stomach. About then Phinous was calling Sims from the office. Appellant marched him at gunpoint into the office and after ordering everyone to lie down, he robbed Phinous and Lundy and took the witness' wallet and watch. Afterwards he ran out the door. (Tr. 106-08.) The gun used resembled Government's Exhibit No. 1 (Tr. 109). He identified portions of Government's Exhibit No. 2 as his wallet and personal papers (e.g. driver's permit) (Tr. 110-12).

Officer Way testified that on March 18, 1967, he arrested appellant in the 6900 block of Sheriff Road, Chapel Oaks, Maryland and recovered the two Government exhibits from his person (Tr. 141-42). Following admission of the exhibits into evidence the Government rested (Tr. 143).

Appellant then took the stand. He did participate in the moving job that night. There was a fifth, heavy-set man on the job not mentioned by Phinous and Sims. At around 9:30 p.m. the men took a break to enjoy sandwiches, coffee and a drink of liquor. (Tr. 156, 158-61.) When they reached the unloading location, Sims said he was cold and waited in the truck while the others unloaded. Sims could not be awakened when it was time to return to the store and was transferred to the car to drive back with Phinous. The other three returned in

the truck, appellant at the wheel. In the truck appellant found Sims' wallet and pocketed it with the idea of giving it to Sims at the store. Later it "slipped" his mind to return it. (Tr. 62-63.)

Back at the store Phinous sent appellant to Lil's Grill for sandwiches (Tr. 163). He returned with sandwiches, coffee and two half pints of liquor purchased from a bootlegger. Everyone "tasted", except apparently Sims, who was sleeping on a couch. (Tr. 164, 166.) In an ensuing card game appellant won some \$70.00. Finally, Phinous, as the loser of a bet with appellant on a particular hand, refused to pay. An argument between the two ended with Phinous taking a swing at appellant. In response, appellant hit Phinous in the face and quit the premises (Tr. 164). He had returned to the store several times to return the wallet, he said, including the night he was arrested, and had never put Sims' wallet to his personal use (Tr. 164-65, 190-91).

SUMMARY OF ARGUMENT

At approximately 3:05 or 3:10 a.m., Officer Way observed appellant driving a 1960 Chevrolet convertible white over blue or turquoise in color at Eastern Avenue and Quarles Street, Northeast. The officer was then responding to a radio run received two to three minutes previously for a robbery of a gas station at 1301 Kenilworth Avenue, Northeast, some six to eight blocks from this intersection, by an armed Negro male driving a 1960 Chevrolet convertible with D. C. tags 164-445. Twenty minutes before the run he had heard a radio report for the robbery of a gas station at 1201 Bladensburg Road, Northeast, with a lookout for a particularly described Negro male last seen driving a 1960 Chevrolet convertible light bluish-green in color with D.C. tags 164-465 in Northeast Washington east on M street from 17th Street. Officer Way followed and when appellant eventually turned off the road for his own reason, the officer saw the tag number of the Chevrolet, D.C. 164-465, before he got out

of the scout car to make the arrest. Before the arrest Way had grounds to be certain that appellant was driving the car described in the lookouts, and appellant's arrest was clearly with probable cause.

ARGUMENT

There was probable cause for appellant's arrest.

Appellant attacks his arrest by Officer Way as made without probable cause. We think that the arrest was clearly lawful and the motion to suppress therefore properly denied.

At approximately 2:45 a.m. Way heard the radio report for the robbery of a gas station at 1201 Bladensburg Road, Northeast. The robber was a particularly described Negro male last seen operating a 1960 Chevrolet convertible light bluish-green in color with D.C. tags 164-465 in Northeast Washington east on M Street from 17th Street. Some twenty minutes later, at about 3:05 a.m., Way received a radio run for a robbery holdup at Myers Gulf Station, 1301 Kenilworth Avenue, Northeast, with a lookout for an armed Negro male driving a 1960 Chevrolet convertible with D. C. tags 164-445. About two to three minutes later, while responding to this run, he saw appellant and his car at Eastern Avenue and Quarles Street, approximately six or eight blocks away from the Kenilworth Avenue holdup. That car, proceeding "at a higher than normal rate of speed," he observed to be a 1960 Chevrolet convertible white over blue or turquoise in color. Recognizing that it matched the radio descriptions, the officer commenced pursuit. Since appellant's car was the same in make, year, model and color as the car in the lookouts, and since it was near 1301 Kenilworth Avenue shortly after the run for the robbery there, we think that Officer Way had reasonable grounds for the arrest as soon as he sighted appellant in the car.⁶ At the

⁶ See *Daniels v. United States*, D.C. Cir. No. 21,200, decided March 29, 1968; *Bailey v. United States*, — U.S. App. D.C. —,

very least, the circumstances called for the officer to take whatever steps were necessary to learn the tag number of the car.⁷

Officer Way followed as the Chevrolet drove into Maryland on Sheriff Road.⁸ From its failure to respond to his flashing red light, Officer Way, we think, could have concluded that appellant was avoiding a confrontation with the police. Turning off his flasher, he continued to follow until appellant turned off the road on his own. As both cars were pulling over to stop, Officer Way was able to read the Chevrolet tag number, D.C. 164-465. At this point, which was before the arrest had occurred, he had grounds to be certain that he was dealing with the car described in the lookouts, and the arrest which immediately followed was therefore clearly with probable cause.

While the point was not developed during the motion to suppress hearing, it is reasonable to suppose that the police first learned about each of the radio report robberies from a person who purported to be either a victim or eyewitness. They could thus properly act in the belief that the information received was truthful.⁹

389 F.2d 305 (1967); *Brown v. United States*, 125 U.S. App. D.C. 43, 365 F.2d 976 (1966); *Carter v. United States*, D.C. Ct. App. No. 4426, decided July 24, 1968.

⁷ See *Bailey v. United States*, *supra* at —, 389 F.2d at 312-16 (concurring opinion of Leventhal, J.); *Liles v. United States*, D.C. Cir. No. 20,807, decided November 16, 1967; *Dorsey v. United States*, 125 U.S. App. D.C. 355, 358, 372 F.2d 928, 831 (1967); *Brown v. United States*, *supra* at 46 n. 4, 365 F.2d at 979 n. 4.

⁸ That the arrest was made in Maryland by a District of Columbia policeman is not, nor could it be made the subject of a challenge to the validity of the arrest. See Md. Code, Art. 27, § 595.

⁹ *Daniels v. United States*, *supra* (slip op. at 3); *Brown v. United States*, *supra* at 46, 365 F.2d at 979. See *Payne v. United States*, 111 U.S. App. D.C. 94, 294 F.2d 723, *cert. denied*, 368 U.S. 883 (1961). In *Carter v. United States*, *supra*, the police received information from an anonymous caller of a robbery at Barney Circle, Southeast, and that the robber had run to a red Cadillac convertible parked nearby in the 800 block of Kentucky Avenue. Proceeding to this latter location, the arresting officers found ap-

CONCLUSION ¹⁰

WHEREFORE, we submit that the judgment of the District Court should be affirmed.

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pellant in a red Cadillac convertible about to pull from the curb, arrested him and found a pistol on his person. It was later discovered that the robbery report was false. That no robbery was actually committed was deemed immaterial and the arrest was held valid.

¹⁰ Appellant also urges that his motions for judgments of acquittal should have been granted because (1) Phinous and Sims differed on when the group returned to the store after the moving job, on when the robbery occurred and on who drove the truck and (2) Phinous was impeached with a prior statement that he was drinking at the time of the robbery. Appellant's Br. 11-12. The testimony of the complaining witnesses is consistent with respect to the central facts bearing on the guilt or innocence of appellant. See Counterstatement herein. The conflicts relate only to collateral details about which either or both witnesses could reasonably have been in error. But whatever their bearing on credibility, the crux of the matter is that issues of credibility in a criminal jury trial are strictly for the jury. *E.g., Wigfall v. United States*, 97 U.S. App. D.C. 252, 253, 230 F.2d 220, 221 (1956). See *Glasser v. United States*, 315 U.S. 60, 80 (1942); *Curley v. United States*, 81 U.S. App. D.C. 389, 392, 160 F.2d 229, 232, *cert. denied*, 331 U.S. 837 (1947). And an admitted prior inconsistent statement does not take the matter of a witness' credibility away from the jury. *Green v. United States*, 110 U.S. App. D.C. 99, 289 F.2d 765 (1961). See *Shelton v. United States*, 83 U.S. App. D.C. 257, 259, 169 F.2d 665, 667, *cert. denied*, 335 U.S. 834 (1948) (Even if the testimony of the Government's principal witness was false in part, the jury need not have rejected all of it.) In short, appellant's Argument II was one properly directed to the jury only.